IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 540 of 2001
with
CRIMINAL REVISION APPLICATION NO.542 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBHAI VITTALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 540 & 542 of 2001
MR BM GUPTA for Petitioners
MR DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/09/2002

ORAL JUDGEMENT

1. The only question that is required to be

addressed by this Court in these revision applications is whether the investigation carried by Police Inspector, A.C.B., in the Metro City of Ahmedabad is in breach of clause (b) of Section 17 of the Prevention of Corruption Act and, if so, what would be the effect thereof on the prosecution case.

2. Admittedly, the investigations in both the cases are carried out by Police Inspector, ACB, Ahmedabad, and it is contended that, in light of Section 17 of the Prevention of Corruption Act, 1988, no Police Officer below the rank of an Assistant Commissioner of Police could have investigated the offence punishable under the Act, without an order of the Metropolitan Magistrate, unless the State Government has authorised a Police Officer not below the rank of Inspector of Police in this bahalf by general or special order to investigate into such offences.

3. Admittedly, the State Government had, on July 2, 1965, passed an order in exercise of powers conferred by the first proviso to sub-section (1) of Section 5A of the Prevention of Corruption Act, 1947, authorising every Police Officer not below the rank of an Inspector of Police attached to the Anti Corruption Bureau, Gujarat State, for the purposes of the said proviso.

3.1 Thereafter, on January 10, 1989, the following order came to be passed by the State Government :-

> "In exercise of the powers conferred by the first proviso to Sub-section (c) of Section 17 of the Prevention of Corruption Act, 1988 (Act No.49 of 1988), the Government of Gujarat hereby authorises for the purposes of the said proviso every police officer not below the rank of an Inspector of Police attached to the Anti Corruption Bureau, Gujarat State."

3.2 Later on, on September 4, 1998, the following order came to be passed:-

> "In exercise of the powers conferred by the first proviso to Section 17 of the Prevention of Corruption Act, 1988 (Act No.49 of 1988) and in supersession of Government Order Home Department No.CG/89/5/LRV/3188/3470/H dated the 10th January, 1989, the Government of Gujarat hereby authorises for the purposes of the said proviso every police officer not below the rank of an Inspector of Police attached to the Anti

Corruption Bureau, Gujarat State."

4. It is contended by learned Advocate for the revisioners, Mr. Gupta, that the authorisations dated January 10, 1989 and Septemeber 4, 1998 are in the form of an order and not a notification. In absence of such a notification, the authorisation is not valid. The investigation by an Officer not below the rank of Assistant Commissioner of Police, in absence of authorisation, would be no investigation in the eye of law. Mr. Gupta submitted that the Government has not followed the procedure for issuance of notification.

4.1 It is also contended that the order in question also refers to authorisation under the first proviso to sub-section (c) of Section 17, which relates to area other than Metropolitan Cities referred to in clause (b) of Section 17 and Ahmedabad is one of the cities. The present cases relate to Ahmedabad City, which is a metropolitan area as contemplated under Section 17(b) whereas the order is for areas other than the metropolitan cities and, therefore, this authorisation cannot be considered as one meant for or valid for authorising the Investigation Officers in the present cases to investigate into the matter. Admittedly, the investigations are carried out by Police Inspectors who are below the rank of Assistant Commissione of Police. It was contended that no order of the State Government can disturb or override the provisions of Section 17 of the Prevention of Corruption Act. It was, therefore, contended that the investigations are done by officers not authorised to investigate as no orders of Metropolitan Magistrate are obtained prior thereto. The investigations are, therefore, invalid.

4.1 Mr. Gupta submitted that, all these contentions were raised before the learned Special Judge and the learned Special Judge, while rejecting the prayers made by the revisioners, has assigned no reasons. Mr. Gupta submitted that when there is a conflict in the provisions of the State Legislation and Central Legislation, the provisions of Central Legislation prevail. Mr. Gupta relied on following decisions in support of his contentions:-

(1) Naginlal Nandlal v. State of Gujarat, 1961 GLR 664.

(2) Bhuwaneshwar Prasad Gupta v. State, AIR 1969 Allahabad 503.

(3) H.N. Rishbud and Anr. v. State of Delhi, AIR 1955 SC 196.

(4) A.R. Antulay v. Ramdas Sriniwas Nayak & Anr., AIR 1984 SC 718.

(5) Hamdard Dawakhana and Anr. v. The Union of India & Ors., AIR 1960 SC 554.

(6) A.K. Roy v. Union of India, AIR 1982 SC 710.

(7) Directorate of Enforcement v. Deepak Mahajan & Anr., JT 1994(1) SC 290.

(8) Mangilal & Ors. v. The State of M.P., JT 1994 (3) SC 644.

(9) General Manager, Telecom v. A. Srinivas Rao & Ors., (1997) 8 SCC 767.

(10) Shailendra Kumar Srivastava v. Deputy Registrar (Examinations), University of Allahabad, AIR 1998 Allahabad, 101.

(11) The South Central Railway Co-operative Credit Society Employees Union, Secundrabad. v. The Registrar of Co-operative Societies & Ors., 1998 SAR (Civil) 130.

(12) A. Gopalakrishna Naik v. State, 1962(1) Cri. L.J., 55.

(13) M.B. Tharada v. State of Gujarat, AIR 1969 Gujarat 362.

(14) Nanak Chand v. State of Himachan Pradesh, 1974 Cri.L.J. 660.

(15) Munnalal v. State of U.P., AIR 1964 SC 28.

He, therefore, urged that these revisions may be allowed.

5. Learned Additional Public Prosecutor Mr. Desai appeared for the respondent-State. He has relied on decisions in the cases of Bhupendra Manubhai Mistry v. State of Gujarat, 2001(2) G.L.H. 273 and State by Central Bureau of Investigation v. S. Bangarappa, 2000 AIR SCW 4111. Mr. Desai submitted that, similar question arose before this Court in Fulchandbhai Ambaram

Patel v. State of Gujarat, 1999(2) GLR 1042 and the Court interpreted the orders in light of these very contentions and the law is now settled. He, therefore, urged that similar view may be adopted.

6. Having regard to rival side contentions, at the outset, it may be noted that there is no dispute about the fact that the cases relate to metropolitan city of Ahmedabad and, therefore, as per the statute, no Officer below the rank of Assistant Commissioner of Police can investigate such cases unless an order is passed by the Government authorising an Officer not below the rank of Police Inspector to investigate into the cases. If the proviso to Section 17 is seen, it contemplates such authorisation by the State Government by a general or special order. It does not contemplate any notification, as is argued by learned Advocate Mr. Gupta. The State Government passed orders on January 10, 1989 and then on September 4, 1998. It, therefore, cannot be said that because there is no notification and only order is passed, it would be invalid, as requisite procedure for notification having not been followed. The contention, therefore, cannot be accepted.

7. Now comes the question whether the order dated January 10, 1989 can be construed to mean that it would apply to the metropolitan area of Ahmedabad city or not. In this regard, it may be noted that this very question was raised before this Court in the Case of Fulchandbai A. Patel v. State of Gujarat (supra) and, after considering all the relevant material as well as the legal propositions, this Court held that the investigation carried out by Inspector of Anti Corruption Bureau for the offence committed in metropolitan area of Ahmedabad cannot be said to be without authority of law. There is no dispute about the fact that this judgment has not been carried any further nor has it been upset and, therefore, has attained finality. In paragraph 9 of the said judgment, it is observed thus:

> "9. To arrive at the correct meaning, the notification is required to be split in two parts. First part of the notification deals with the source of authorisation, while the latter part authorises the Inspectors of Police attached to the Anti-Corruption Bureau to investigate any offence under the Act, without the order of a Metropolitan Magistrate or a Magistrate of First Class, as the case may be. The first part refers to the first proviso to sub-section (c) of

> Section 17. It is apparent that there is some error in referring sub-section (c). Since Section 17 is not divided into sub-sections, what is referred to as 'sub-section (c) of Section 17' is really Clause (c) of Section 17 and the 'first proviso to sub-section (c) to Section 17' referred to therein refers to the first proviso to the section. It is the first proviso which empowers the Government to authorise the police officers not below the rank of Inspectors of Police to investigate such offences without the order of Metropolitan Magistrate or a Magistrate of First Class, as the case may be. Therefore, in my view, reference to 'first proviso to sub-section (c) of Section 17' in the first part of the notification is intended to identify the source of power derived by the Government to issue such notification and in no manner it can be interpreted to mean that the notification is confined to the cases covered by Clause (c) of Section 17. The latter part of the notification reads as, 'the Government of Gujarat hereby authorises for the purpose of the said proviso, every police officer not below the rank of Inspectors of Police attached to the Anti-Corruption Bureau, Gujarat State.' Thus, the authorisation conferred under the notification is not restricted either to the areas covered by Clause (b) or to the areas covered by Clause (c) of Section 17. It should, therefore, govern all the areas covered under Clause (b) as well as Clause (c). The words, 'for the purpose of the said proviso' used in the said notification discloses the intention of the Government to confer such authorisation for all the areas governed either by Clause (b) or Clause (c)."

8. In view of the above observations made in the above mentioned case, the law is now settled that the order dated January 10, 1989 does not operate only for the areas referred to in Clause (c) of Section 17 of the Prevention of Corruption Act, but it operates in all the areas covered by Clauses (b) and (c) to the said Section. This Court finds no reason nor any reason is indicated to take a different view from the view taken in the said decision by a co-ordinate Bench.

9. It was contended that the said judgment is not in consonance with the decisions of the Apex Court, as reported in AIR 1960 SC 554 [Hamdard Dawakhana v. Union

of India (paragraph 9)] and AIR 1982 SC 710 [A.K. Roy v. Union of India (paragraph 15)] and the decision of Allahabad High Court reported in AIR 1998 Allahabad 101 (Shailendra Kumar Srivastava v. Dy. Registrar (Exam.), University of Allahabad). In the case of Hamdard Dawakhana (supra), the Apex Court observed in paragraph 9 that one of the principles which has to be borne in mind in examining the constitutionality of the statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to the problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. There cannot be any dispute about this proposition of law and this Court is not even required to consider the intentions of law makers while enacting Section 17 nor can it be said that the order in question is issued dehors the intentions of law makers as the proviso to the said Section itself empowers the Government to issue such an order.

10. Likewise, the other judgments also, in substance, deal with the principles of interpretation of statutes. The interpretation of order of Government dated January 10, 1987 has already been made by this Court in the case of Fulchandbhai Ambaram Patel and has attained finality. As observed earlier, no reasons are indicated to take a different view.

11. A similar question arose before the Apex Court in the case of State by C.B.I. v. S. Bangarappa (supra), wherein the Apex Court considered the provisions of Section 17 as well as notification issued by Superintendent of C.B.I., Bangalore, dated October 21, 1997 and observed that when there is such an order, any Inspector of Police attached to C.B.I. can conduct the investigation. The Court also observed that the word "elsewhere" in clause (c) of Section 17 is clear indication that the insistence for Deputy Superintendent of Police can have application only if it does not fall in clauses (a) and (b). The order in question covers all the areas and, therefore, mere reference to clause (c) in the order by itself cannot be interpreted to mean that it does no cover the metropolitan area of city of Ahmedabad.

12. In Bhupendra Manubhai Mistry v. State of Gujarat (supra), this Court considered the question whether a notification in Official Gazette is required to be published for authorising officer as contemplated under

the proviso to Section 17 and held that no such notification is required. The Court observed that, what is contemplated in the proviso is authorisation by the State Government and not notification by the State Government. The word notification is not defined in any of the three definitions contained under Section 2 of the Prevention of Corruption Act and held that no noification was required to be issued by the Government in the Official Gazette. The Court observed thus:

> "Consequently, it cannot be said that the investigation was carried out without any sanction of law or authority of law or that the notification authorising P.S.I., ACB, should have been published in the Official Gazette. This could not be a ground for dicharge."

13. In view of the above discussion, this Court is of the view that the orders impugned herein passed by the learned Special Judge, Ahmedabad City, cannot be considered as illegal, improper or incorrect in any manner, so as to cause miscarriage of justice and no interference in exercise of revisional jurisdiction is, therefore, called for. The revision applications, therefore, must fail and are dismissed. Rule is discharged in both the matters.

[A.L. DAVE, J.]

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